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No. 575

In the Supreme Court of the United States

OCTOBER TERM, 1959

THE FIRST NATIONAL CITY BANK OF NEW YORK,
PETITIONER

v.

INTERNAL REVENUE SERVICE OF THE UNITED STATES TREASURY DEPARTMENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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The Internal Revenue Service, investigating the tax liability of the Atlanta Corporation, Ltd., a Panamanian corporation with offices in New York City and Panama, issued a summons to the petitioner Bank directing it to produce its records relating to Atlanta's account with it (R. 25a–26a). The summons was issued to the Bank's head office in New York City but directed it also to produce records kept at the Bank's Panama branch. The district court, on the Bank's motion to quash, limited the summons to the records kept in New York (Pet. 2D–3D). The court of appeals reversed (Pet. 1B 7B).

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The Bank does not deny that it has actual control over its Panama branch and the power to direct it to produce the records or that such control is normally sufficient to support an order for production of records located outside the jurisdiction of the court. See *Securities and Exchange Commission* v. *Minas de Artemisa*, 150 F. 2d 215, 217 (C.A. 9); *In re Ironclad Mfg. Co.*, 201 Fed. 66, 68–69 (C.A. 2); *In re National Public Utility Investing Corp.*, 79 F. 2d 302, 303. Its contention is that the usual rule does not apply because § 25 of the Federal Reserve Act provides that a national bank "shall conduct the accounts of each foreign branch independently of the accounts of * * * its home office," simply transferring the branch's net profit or loss to its general ledger at the end of each year (12 U.S.C. 604; Pet. 13A). As the court of appeals held, however, that provision is patently no more than a "bookkeeping" statute designed to simplify examination of the financial condition of the branches (Pet. 4B) and has no bearing on the power of the head office to require the branch to forward its "separate" accounts for examination or production.[1]

The contention that compliance with the summons would require Bank personnel to violate the laws of Panama is completely unsupported. The constitutional and statutory provisions set forth in the affidavit of Dr. Carlos Icaza (R. 27a–34a) in no way forbid the owner of documents from showing them to

[1] *In re Harris*, 27 F. Supp. 480 (S.D.N.Y.), and the other district court decisions within the Second Circuit which follow it (see Pet. 14–18) are irrelevant, for to the extent that they are in conflict with the decision below they were overruled by it. See Pet. 5B.

anyone or transporting them out of the country; they simply prohibit extra-judicial seizures (cf. the Fourth Amendment) and prescribe the procedure and scope of discovery and inspection proceedings in Panamanian courts (cf. Rule 34, F.R. Civ. P.). They do not touch upon the relationship of a bank to its depositors, and the concluding "opinion" of Dr. Icaza that the Bank, the owner of the records, cannot produce them "without the consent of the depositor" (R. 33a) is simply a bald assertion unsupported by anything in the quoted provisions or by citation of authority. The conclusion that compliance with the summons would require the branch office personnel to "violate" the laws of Panama, without saying which laws or in what way they would be violated, was likewise properly rejected by the court of appeals as being unsupported. In any event, the question is solely one of interpretation of Panamanian law and presents no issue appropriate for review by this Court.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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